

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 213 of 1999
with
CIVIL APPLICATION No.3453 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

AYUB HAJI ALI SANGHAR

Versus

AMAD HAJI ALI SANGHAR

Appearance:

MR RC KAKKAD for Appellant
MR BP MUNSHI for Respondent No. 1
MS NIRALI B MUNSHI for Respondent No. 2

CORAM : MR.JUSTICE A.M.KAPADIA
Date of decision: 12/08/1999

ORAL JUDGEMENT

In this Appeal from Order, the appellant has brought in challenge the order dated 15.3.1999 recorded below Ex.5 in Special Civil suit No.22 of 1998 by learned Civil Judge (S.D.), Khambhalia, district Jamnagar whereby

he has rejected the application Ex.5 which was filed by the plaintiff for getting order of interim injunction with respect to vessel AL GARIBE NAVAZ which is in possession of the defendants.

2. The suit in question has been filed by the plaintiff for partition of the vessel AL GARIBE NAVAZ inter alia alleging that the said vessel originally belonged to his father, which was given by way of bakshish to the plaintiff and the defendants jointly and accepted the same by them. It is further averred that the plaintiff being the elder son of his father, his father gave a power-of-attorney dated 15.6.1986 for managing the affairs of the said vessel to him. It is further averred that, at present the registration of the said vessel is transferred in the name of defendants Nos.1 & 2 without consent of the plaintiff with a view to infringe the right of the plaintiff on the said vessel. Therefore, the suit was filed for a declaration and consequential relief restraining the defendants from transferring the said vessel in favour of a third party. Along with the suit, an application Ex.5 was also filed wherein relief of ad-interim injunction was claimed against the defendants restraining them from transferring the said vessel during pendency of the suit.

3. The application was contested by the defendants. The learned trial judge after hearing the learned advocates appearing for the parties and the facts and circumstances emerging from the record of the case, came to the conclusion that the plaintiff is not entitled for discretionary relief as sought for and resultantly he rejected the application Ex.5. It is this finding and order which is now impugned in this Appeal from Order at the instance of the original plaintiff.

4. Learned advocate Mr.R.C.Kakkad while assailing the impugned order drew attention of this Court upon a pursis Ex.12 which was filed by the defendants wherein inter alia they have declared that, at present they are not to sell the said vessel. Upon filing of the aforesaid pursis, the learned trial Judge ought to have granted injunction as prayed for in favour of the plaintiff.

5. Learned advocate Mr.Munshi for the respondents while supporting the order impugned conceded that the said pursis was filed by the defendants. However, he contended that the said pursis was given by the defendants showing their intention not to sell the said vessel during that relevant time. Learned trial Judge

has recorded the order on the basis of the document, upon which reliance was placed by both the parties, and the learned trial Judge has held that there was a partnership firm and the said firm was dissolved and at the time of its dissolution, the vessel was given to defendant No.1 by way of a release-deed and the power-of-attorney which was executed for managing the affairs of the said vessel, therefore, the said finding and order do not require interference by this court. He again reiterated that his client is not at all interested in selling the said vessel at present.

6. After having heard the submissions advanced by both the advocates and in the facts and circumstances emerging from the record of the case, I am of the opinion that, in view of Ex.12 that the defendants are not interested in selling the said vessel, no prejudice is going to cause to them if they are restrained from selling the said vessel till decision of the suit and on his count alone, this Appeal from Order can be allowed in part.

7. Learned advocate Mr.Munshi at this stage does not press for recording a reasoned order for allowing the Appeal from Order by granting the relief as prayed for. Upon his request, this Court is refrained from recording a reasoned order for allowing the Appeal from Order by granting the relief restraining the defendants from selling the said said vessel during pendency of the suit.

8. In the net result, the Appeal succeeds in part and accordingly it is partly allowed with no order as to costs. Resultantly, the defendants are hereby restrained from selling vessel AL GARIBE NAVAZ to any third party during pendency of the suit.

9. There shall be no order on Civil Application No.3453 of 1999. Notice issued therein shall stand discharged.

10. The learned trial Judge shall expedite the trial consistent with his calendar.

(KMG Thilake)

\$\$\$\$\$\$